



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

JAN 31 2017

REPLY TO THE ATTENTION OF:

VIA E-MAIL:

Todd Richards
Todd.Richards@dteenergy.com
Assistant General Counsel EES Coke L.L.C.



Todd Richards
EES Coke, L.L.C.
1400 Zug Island Road
River Rouge, MI 48209

Dear Mr. Hartman:

Enclosed is a file-stamped Consent Agreement and Final Order (CAFO) which resolves EES Coke L.L.C., docket no. CAA-05-2017-0009. As indicated by the filing stamp on its first page, we filed the CAFO with the Regional Hearing Clerk on January 31, 2017.

Pursuant to paragraph 44 of the CAFO, must pay the civil penalty within 30 days of the filing date. Your electronic funds transfer must display the case name and case docket number.

Please direct any questions regarding this case to Robert Smith, Associate Regional Counsel at (312) 886-0765.

Sincerely,

Sarah Marshall, Chief
Air Enforcement and Compliance Assurance Section (MI/WI)

Enclosure

cc: Ann Coyle, Regional Judicial Officer/C-14J
Regional Hearing Clerk/E-19J
Robert Smith/C-14J
Tom Hess/HESST@michigan.gov
Wilhemina McLemore/MCLEMOREW@michigan.gov

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**



In the Matter of:)	Docket No.	CAA-05-2017-0009
)		
EES Coke Battery, L.L.C.)	Proceeding to Assess a Civil Penalty	
River Rouge, Michigan)	Under Section 113(d) of the Clean Air Act,	
)	42 U.S.C. § 7413(d)	
Respondent.)		
_____)		

Consent Agreement and Final Order

Preliminary Statement

1. This is an administrative action commenced and concluded under Section 113(d) of the Clean Air Act (the CAA), 42 U.S.C. § 7413(d), and Sections 22.1(a)(2), 22.13(b), and 22.18(b)(2) and (3) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules), as codified at 40 C.F.R. Part 22.
2. Complainant is the Director of the Air and Radiation Division, U.S. Environmental Protection Agency (EPA), Region 5.
3. Respondent is EES Coke Battery, L.L.C. ("Respondent" or "EES"), a limited liability company doing business in Michigan. Respondent operates a coke battery facility in River Rouge, Michigan.
4. Where the parties agree to settle one or more causes of action before the filing of a complaint, the administrative action may be commenced and concluded simultaneously by the issuance of a consent agreement and final order (CAFO). 40 C.F.R. § 22.13(b).
5. The parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.

6. Respondent consents to the assessment of the civil penalty specified in this CAFO and to the terms of this CAFO.

Jurisdiction and Waiver of Right to Hearing

7. Respondent admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations in this CAFO.
8. Respondent waives its right to request a hearing as provided at 40 C.F.R. § 22.15(c), any right to contest the allegations in this CAFO and its right to appeal this CAFO.

Statutory and Regulatory Background

9. On March 7, 1990, EPA promulgated the National Emission Standard for Hazardous Air Pollutants (NESHAP) for Benzene Waste Operations (Subpart FF) at 40 C.F.R. §§ 61.340-359. See 55 Fed. Reg. 8,346.
10. Benzene is a "hazardous air pollutant." 42 U.S.C. § 7412(b)(1); 40 C.F.R. § 61.01(a).
11. Subpart FF applies to, among others, owners and operators of chemical manufacturing plants, coke by-product recovery plants, and petroleum refineries. 40 C.F.R. § 61.340(a).
12. Subpart FF at 40 C.F.R. § 61.342(a) states "an owner or operator of a facility at which the total annual benzene quantity from facility waste is less than 10 megagrams per year (Mg/yr) (11 ton/yr) shall be exempt from the requirements of paragraphs (b) and (c) of this section. The total annual benzene quantity from facility waste is the sum of the annual benzene quantity for each waste stream at the facility that has a flow-weighted annual average water content greater than 10 percent or that is mixed with water, or other wastes, at any time and the mixture has an annual average water content greater than 10 percent."
13. Subpart FF at 40 C.F.R. § 61.355(a)(4)(ii) states "if the total annual benzene quantity from facility waste is less than 10 Mg/yr (11 ton/yr) but is equal to or greater than 1 Mg/yr (1.1

ton/yr), then the owner or operator shall repeat the determination of total annual benzene quantity from facility waste at least once per year and whenever there is a change in the process generating the waste that could cause the total annual benzene quantity from facility waste to increase to 10 Mg/yr (11 ton/yr) or more.

14. EPA promulgated the NEHSAP for Equipment Leaks (Fugitive Emission Sources) (Subpart V) at 40 C.F.R. §§ 61.240-247 on June 6, 1984. See 49 Fed. Reg. 23,513.
15. Subpart V at 40 C.F.R. § 61.240 (a) states "the provisions of this subpart apply to each of the following sources that are intended to operate in volatile hazardous air pollutant (VHAP) service: pumps, compressors, pressure relief devices, sampling connection systems, open-ended valves or lines, valves, connectors, surge control vessels, bottoms receivers, and control devices or systems required by this subpart."
16. Subpart V at 40 C.F.R. § 61.242-1(a) states "each owner or operator subject to the provisions of this subpart shall demonstrate compliance with the requirements of 40 C.F.R. §§ 61.242-1 to 61.242-11 for each new and existing source as required in 40 C.F.R. § 61.05, except as provided in 40 C.F.R. §§ 61.243 and 61.244."
17. Subpart V at 40 C.F.R. § 61.242-2(a)(1) states "each pump shall be monitored monthly to detect leaks by the methods specified in 40 C.F.R. § 61.245(b), except as provided in 40 C.F.R. § 61.242-1(c) and paragraphs (d), (e), (f) and (g) of this section."
18. Subpart V at 40 C.F.R. § 61.242-2(a)(2) states "each pump shall be checked by visual inspection each calendar week for indications of liquids dripping from the pump seal."
19. Subpart V at 40 C.F.R. § 61.242-2(b)(1) states "if an instrument reading of 10,000 ppm or greater is measured, a leak is detected."

20. Subpart V at 40 C.F.R. § 61.242-7(a) states “each valve shall be monitored monthly to detect leaks by the method specified in 40 C.F.R. § 61.245(b) and shall comply with paragraphs (b)-(e), except as provided in paragraphs (f), (g), and (h) of this section, 40 C.F.R. § 61.243-1 or 40 C.F.R. § 61.243-2, and 40 C.F.R. § 61.242-1(c).”

21. Subpart V at 40 C.F.R. § 61.242-7(b) states “if an instrument reading of 10,000 ppm or greater is measured, a leak is detected.”

22. Subpart V at 40 C.F.R. § 61.245(b) states “Monitoring, as required in §§ 61.242, 61.243, 61.244, and 61.135, shall comply with the following requirements:

- (1) Monitoring shall comply with Method 21 of Appendix A of 40 C.F.R. Part 60.
- (2) The detection instrument shall meet the performance criteria of Method 21.
- (3) The instrument shall be calibrated before use on each day of its use by the procedures specified in Method 21.

(4) Calibration gases shall be:

- (i) Zero air (less than 10 ppm of hydrocarbon in air); and
- (ii) A mixture of methane or n-hexane and air at a concentration of approximately, but less than, 10,000 ppm methane or n-hexane.

(5) The instrument probe shall be traversed around all potential leak interfaces as close to the interface as possible as described in Method 21.”

23. The Administrator of EPA (the Administrator) may assess a civil penalty of up to \$37,500 per day for each violation, with a maximum of \$295,000 for violations that occurred between January 13, 2009 and December 6, 2013, \$37,500 per day of violation up to a total of \$320,000 for CAA violations that occurred between December 7, 2013 and November 2, 2015, and \$44,539 per day for each violation, with a maximum of \$356,312 for violations

that occurred after November 2, 2015, and were assessed on or after August 1, 2016, under Section 113(d) of the Act, 42 U.S.C. § 7413(d), and 40 C.F.R. Part 19.

24. Section 113(d)(1) limits the Administrator's authority to matters where the first alleged date of violation occurred no more than 12 months prior to initiation of the administrative action, except where the Administrator and the Attorney General of the United States jointly determine that a matter involving a longer period of violation is appropriate for an administrative penalty action.
25. The Administrator and the Attorney General of the United States, each through their respective delegates, have determined jointly that an administrative penalty action is appropriate for the period of violations alleged in this CAFO.

Factual Allegations and Alleged Violations

26. EES is a "person" as that term is defined under Section 101(21) of CAA, 42 U.S.C. § 9601(21).
27. EES owns and operates the eighty-five coking ovens constituting the Number 5 Coke Oven Battery (No. 5 Battery) at the United States Steel Corporation (USS) Great Lakes Works Coke, Iron and Steel Works in River Rouge, Michigan.
28. EES also owns and operates a "coke by-product recovery plant," as that term is defined by 40 C.F.R. § 61.341, which is located adjacent to the No. 5 Battery.
29. EES's coke by-product recovery plant is a "facility," as that term is defined by 40 C.F.R. § 61.341.
30. Subpart FF applies to EES's coke by-product recovery plant.
31. Subpart V applies to EES's coke by-product recovery plant.

32. EPA conducted an inspection of the coke by-product recovery plant on March 17-18, 2015 (March 2015 inspection).
33. EES performed sampling to determine the total annual benzene quantity at the coke by-product recovery plant in 2006.
34. EPA alleged that, since 2006, EES made a process change in the coke by-product recovery plant by ceasing operation of the phenol system.
35. In the total annual benzene report for the facility submitted for calendar year 2014, EES reported a benzene quantity of 1.53 megagrams.
36. Based on recent sampling, EES submitted a revised total annual benzene report indicating that the benzene quantity is now 3.3428 megagrams.
37. EPA alleged that EES failed to repeat the determination of total annual benzene quantity after the removal of phenol system, which EPA alleged constituted a process change in violation of 40 C.F.R. § 61.355(a)(4)(ii).
38. As a result of the March 2015 inspection, EPA identified the following eight missed weekly visual inspections on four pumps:
 - (1) April 29, 2012
 - (2) December 23, 2012
 - (3) March 31, 2013
 - (4) April 14, 2013
 - (5) September 8, 2013
 - (6) November 24, 2013
 - (7) February 16, 2014
 - (8) November 16, 2014

39. EES's semi-annual reports under Subpart V for the period of January 2014 through December 2014 (dated July 22, 2014 and January 28, 2015) indicated that EES used 500 ppm of methane in air as the calibration gas standard on its Method 21 calibration forms.
40. EPA issued a Finding of Violation (FOV) to EES on September 29, 2015.
41. The FOV alleged that EES committed the following violations:
- a. Failed to conduct required weekly visual inspections on certain pumps on certain occasions in violation of 40 C.F.R. § 61.242-2(a)(2).
 - b. Failed to perform Method 21 properly on valves and pumps by not using methane or n-hexane as the calibration gas in violation of 40 C.F.R. §§ 61.242-2(a)(1), 61.242-7(a), and 61.245(b).
 - c. Failed to perform Method 21 properly on valves and pumps by not using a 10,000 ppm calibration gas in violation of 40 C.F.R. §§ 61.242-2(a)(1), 61.242-7(a), 61.245(b).
 - d. Failed to repeat the determination of total annual benzene quantity since the removal of phenol system constituted a process change in violation of 40 C.F.R. § 61.355(a)(4)(ii).
42. On December 14, 2015, EPA and EES discussed the allegations in the FOV.

Civil Penalty

43. Based on analysis of the factors specified in Section 113(e) of the CAA, 42 U.S.C. § 7413(e), the facts of this case and cooperation, prompt return to compliance, and pursuant to the Clean Air Act Stationary Civil Penalty Policy, Complainant has determined that an appropriate civil penalty to settle this action is \$154,000.

44. Within 30 days after the effective date of this CAFO, Respondent must pay a \$154,000 civil penalty by electronic funds transfer, payable to "Treasurer, United States of America," and sent to:

Federal Reserve Bank of New York
ABA No. 021030004
Account No. 68010727
33 Liberty Street
New York, New York 10045
Field Tag 4200 of the Fedwire message should
read: "D68010727 Environmental Protection Agency"

In the comment or description field of the electronic funds transfer, state Respondent's name and the docket number of this CAFO.

45. Respondent must send a notice of payment that states Respondent's name and the docket number of this CAFO to EPA at the following addresses when it pays the penalty:

Attn: Compliance Tracker (AE-17J)
Air Enforcement and Compliance Assurance Branch
Air and Radiation Division
U.S. Environmental Protection Agency, Region 5
77 W. Jackson Boulevard
Chicago, Illinois 60604

Robert H. Smith (C-14J)
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 5
77 W. Jackson Boulevard
Chicago, Illinois 60604

Regional Hearing Clerk (E-19J)
U.S. Environmental Protection Agency, Region 5
77 W. Jackson Boulevard
Chicago, Illinois 60604

46. This civil penalty is not deductible for federal tax purposes.
47. If Respondent does not pay timely the civil penalty, EPA may request the Attorney General of the United States to bring an action to collect any unpaid portion of the penalty with interest, nonpayment penalties and the United States enforcement expenses for the

collection action under Section 113(d)(5) of the CAA, 42 U.S.C. § 7413(d)(5). The validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.

48. Respondent must pay the following on any amount overdue under this CAFO. Interest will accrue on any overdue amount from the date payment was due at a rate established by the Secretary of the Treasury pursuant to 26 U.S.C. § 6621(a)(2). Respondent must pay the United States enforcement expenses, including but not limited to attorney's fees and costs incurred by the United States for collection proceedings. In addition, Respondent must pay a quarterly nonpayment penalty each quarter during which the assessed penalty is overdue. This nonpayment penalty will be 10 percent of the aggregate amount of the outstanding penalties and nonpayment penalties accrued from the beginning of the quarter. 42 U.S.C. § 7413(d)(5).

General Provisions

49. Consistent with the Standing Order Authorizing E-Mail Service of Orders and Other Documents Issued by the Regional Administrator or Regional Judicial Officer under the Consolidated Rules, dated March 27, 2015, the parties consent to service of this CAFO by e-mail at the following valid e-mail addresses: smith.roberth@epa.gov (for Complainant), and SLJohnson@honigman.com (Counsel for Respondent). The parties waive their right to service by the methods specified in 40 C.F.R. ' 22.6.
50. EES is entering into this CAFO to settle EPA's allegations. This CAFO resolves only Respondent's liability for federal civil penalties for the violations alleged in this CAFO.
51. Subject to Paragraph 52, the CAFO does not affect the rights of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violation of law.

52. This CAFO does not affect Respondent's responsibility to comply with the CAA and other applicable federal, state and local laws. Except as provided in paragraph 50, above, compliance with this CAFO will not be a defense to any actions subsequently commenced pursuant to federal laws administered by EPA.
53. Respondent certifies to the best of its knowledge that it is complying fully with 40 C.F.R. Part 61, Subparts FF and V.
54. This CAFO constitutes an "enforcement response" as that term is used in EPA's Clean Air Act Stationary Civil Penalty Policy to determine Respondent's "full compliance history" under Section 113(e) of the CAA, 42 U.S.C. § 7413(e).
55. The terms of this CAFO bind Respondent, its successors, and assigns.
56. Each person signing this consent agreement certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.
57. Each party agrees to bear its own costs and attorney fees in this action.
58. This CAFO constitute the entire agreement between the parties.

EES Coke Battery, L.L.C., Respondent

1/10/17
Date

David T. Smith
David Smith
Vice-President

United States Environmental Protection Agency, Complainant

1/25/17
Date

Edward Nam
Edward Nam
Acting Director
Air and Radiation Division
U.S. Environmental Protection Agency, Region 5

Consent Agreement and Final Order
In the Matter of: EES Coke Battery, L.L.C.
Docket No. CAA-05-2017-0009

Final Order

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective immediately upon filing with the Regional Hearing Clerk. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31. IT IS SO ORDERED.

January 27, 2017
Date

Ann L. Coyle
Ann L. Coyle
Regional Judicial Officer
U.S. Environmental Protection Agency, Region 5

Consent Agreement and Final Order
In the matter of: EES Coke L.L.C.
Docket Number: CAA-05-2017-0009

CERTIFICATE OF SERVICE

I certify that I served a true and correct copy of the foregoing **Consent Agreement and Final Order**, docket number **CAA-05-2017-0009** which was filed on January 31, 2017, in the following manner to the following addressees:

Copy by E-mail to Respondent: David Smith
David.Smith@dteenergy.com

Copy by E-mail to Attorney for Complainant: Robert Smith
smith.roberth@epa.gov

Copy by E-mail to Attorney for Respondent: S. Lee Johnson
SLJohnson@honigman.com

Copy by E-mail to Regional Judicial Officer: Ann Coyle
coyle.ann@epa.gov

Dated: January 31, 2017

LaDawn Whitehead
LaDawn Whitehead
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 5